



FAIRHAVEN PLANNING BOARD

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Fairhaven Planning Board

Minutes

Tuesday, August 11, 2020 – 6:30pm
Town Hall, 40 Center Street,
Fairhaven MA 02719

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MASS.

1. GENERAL BUSINESS:

a) Chair's Welcome and Media Notification – Mr. Farrell opened the meeting at 6:40pm. Advised the meeting is being done remotely.

b) Quorum/Attendance:

Present: Chairperson, John Farrell; Jeffrey Lucas, Cathy Melanson, Jay Malaspino, Wayne Hayward, Geoff Haworth and Jay Simmons attended via an online remote platform (Zoom). Rene Fleurent attended in the Banquet Room.

Town Planner Paul Foley was in attendance in the Banquet Room of Town Hall.

Absent: None.

c) **Minutes:** July 28, 2020 – Cathy Melanson made a motion to accept the minutes of July 28, 2020 and was seconded by Rene Fluerent. The motion passed with one abstaining, Geoff Haworth as he was not at the meeting.

d) **Planning Board Bills:** none.

e) Correspondence

Mr. Foley stated he received an email from an attorney from the Bridge Street gas station proposing an easement and it will be discussed at the next meeting. They are also going to extend the fence.

Mr. Foley advised all members who were absent at the first public hearing for Bask have filled out the proper Mullins filings with him and the Town Clerk.

2. PUBLIC HEARINGS:

a) Public Hearings: Continued from July 28, 2020

- 1) SP2020-03-Bask, Inc. Recreational Marijuana Sales: Public Hearing for a proposal to expand current operations at 2 Pequod Road from a Medical Marijuana Treatment Center to include adult-use recreational marijuana sales. 2 Pequod Road in Fairhaven, MA (Map 36, Lot 14-1.6 acres). The property is owned by the David and Thelma L. Sylvia Trust.

Mr. Farrell opened the public hearing for the SP2020-03-Bask Inc.

Mr. Foley reviewed the plan and stated that Bask has secured offsite parking on Pequod, part of the Upper Deck property for their employees. He explained where the entrances for medical and

recreational will be. Mr. Foley stated that they returned with a four phase opening plan that includes a police detail near Alden Road with 4 parking attendants during phase one and a plan for parking.

Mr. Foley noted they secured offsite parking for employees during the opening phases and they are also showing potential for future parking spots on the location if they need it. Mr. Foley stated that the Deputy Fire Chief only had a concern if there was an emergency down the street, there may be issues with parked cars on the side of the road. However, Bask representatives stated that the parking attendants will be connected with walkie-talkies and have the ability to talk to each other and alert vehicles if there is an emergency.

Mr. Foley stated the Applicant wants to reserve the right to cultivate and manufacture in the future, and they want to extend their hours from 10-5 to 9-10 pm.

He reviewed the traffic summary update with the four (4) phase plan. Graduation to each successive phase would be approved by a weekly working group that would include a representative of fire, police and planning. Phase 4 would have to be approved by Planning Board.

Mr. Foley reviewed the four phase plan as proposed in the August 7, 2020 "Bask Fairhaven Opening Traffic and Parking Management Plan". In Phase One, there would be a police detail at the corner of Alden and Pequod seven days a week and four parking lot attendants to manage lots and parking queue. There would be a mandatory 'pre-ordering/order ahead' and soft opening announcements through social media, website and local media. Plans show nine potential employee parking spaces on grassy area with remaining staff utilizing off-site parking. In Phase 1, would be the beginning of week meetings on Monday/Tuesday with Town Departments including Police, Fire/EMS, and Planning to discuss operations, traffic volumes, and address any issues until there is consensus that it is safe to proceed to Phase 2. Phase 2 includes police details on Thursday, Friday and Saturday or days identified from the working meeting group and four parking attendants to manage lots and parking queue on police detail days. Phase 3 would also include police detail on Friday and Saturday or as needed and two to four parking lot attendants depending on volume, etc. Phase 4 would utilize the overflow parking plan as needed for special events and holidays and have on-going quarterly meetings with town departments. They are also proposing an annual report to the planning board for special permitting.

Mr. Foley put together possible conditions for the Special Permit. He said that most are their standard conditions but some are tailored to this project specifically.

Tim Keogh, Bask President spoke on behalf of the project. Mr. Keogh stated he has a great relationship with the Town, and a reputation to uphold. His intention is to use Fairhaven as their benchmark as they move forward in the business and that's why they have been careful and intentional with their plans.

Mr. Farrell asked if there were any concerns with the conditions Mr. Foley has put together.

Mr. Keogh stated that he wasn't sure they would have to return to the Planning Board before they entered phase four.

Board member, Rene Fleurent asked what precautions Bask was undertaking to assure that customers didn't park in the USPS (United States Postal Service) parking lot, as that is federal grounds and marijuana is still illegal federally.

Mr. Keogh stated that in the opening period, where they may see higher volume of traffic there will be a police detail and parking lot attendants who will be directing traffic. He said the parking lot attendants will be sensitive to the USPS parking lot. He said they will be also putting out marketing and education material to the community through their outreach efforts. He said there will be no access to that parking lot.

Mr. Fleurent stated the plans sounds good for the beginning phases, but was concerned for the future, in a year or now, he wanted to assure that there was not going to be any parking there whatsoever and asked if a barrier or chain link fence could be installed.

Mr. Keogh stated that there is rock wall there now that deters parking there and that in the three years they have been there, there has never been a problem with that parking lot.

Former police chief, Gary Souza and Bask's head of security stated that in every phase there will be a parking lot attendant and if anyone parks there they wouldn't be allowed in the building.

Mr. Fleurent asked if they would be comfortable with that as an additional condition and they agreed.

Mr. Hayward stated he appreciated the work that has been done with the plan for proper phasing. He specifically asked about the light poles on the property, that face the post office and asked if those lights are on the parking spaces on their property.

Mr. Keogh stated the parking spaces were on his property, he said there was an easement that was done with the parcel of the lessee of the USPS land.

Mr. Hayward asked that the engineers should review minimum light standards for the property. He said he was happy with the four phase plan that was submitted and asked when they were hoping phase one would begin.

Mr. Keogh explained that in an optimistic world he was hoping for November/December. Mr. Keogh explained the process from getting the Special Permit vote to the inspections that have to be done through the state and final licenses through the state Commissioners.

In referring to condition number five, Mr. Hayward said he would rather not see police detail on Alden Road after dark. He said thinking of the hours of operation in November/December being 9am to 9pm, it would be very dark; and he didn't think that would be a good idea for safety concerns.

Mr. Keogh stated they have been operating there for several years now and it has been getting dark 4-4:30pm in the peak of winter with fairly decent lighting. He said he'd be happy to look at a lighting plan. We want to do whatever is in the best interest of getting business and launch safely while balancing with neighboring facilities. Maybe 10 am to 8 pm for the first few phases, but he would also defer to the Police Department on their opinion.

Mr. Hayward suggested 9am to 7pm.

Mr. Keough was okay with a 7pm close in the first few phases, therefore 9am to 7pm for the first two phases would be okay.

Mr. Souza stated that there is lighting there and an officer will be standing on the side of the road. He believes there is adequate lighting there. He agreed that 7pm is perfectly reasonable for the beginning phases of opening operations. As a former Police Chief, he did say that the Police certainly have the power to terminate the detail if there are unsafe conditions for their officers.

Mr. Lucas asked if there was an agreement with the overflow parking with Upper Deck as there was nothing that they have seen in writing. He wondered if it was long term or in the opening phases only. In reference to the conditions, Mr. Lucas questioned condition number four and asked if it was legal to be written as it was. Mr. Lucas said he would like to know what the triggers would be to reopen the Special Permit to review any parking situation. He has concerns on underdeveloped parcels in that area that could cause issues in the future if it became developed to a greater degree.

Mr. Farrell stated the trigger for him would be complaints. Mr. Foley added that a working group will be reviewing this weekly and then quarterly and issues that arise could be discussed and worked out at that time.

Mr. Lucas made an observation that he felt the time to get the product might be a bit understated.

Mr. Keough explained that all employees will be parking off site. He stated he has a month to month agreement for leasing the employee parking lot for phases 1-3. Mr. Farrell asked that language be added to condition #3.

Mr. Hayward suggested a condition, #27 that asked the engineers to review lighting plan.

Engineer, Mr. Steve Giosia stated that after phase 4 if there was a need for additional parking they would be looking at the wooded area they've identified on the plan in light blue

Mr. Haworth commented that he was happy with the four phase plan that was brought forth tonight, and his questions were answered regarding parked cars stacking up.

Ms. Melanson commented that she too was happy with what they came back with and happy with the parking plan.

Mr. Malaspino commented he was also happy with the parking issues and it seemed that any minor issues have been resolved with what has been presented tonight.

Mr. Simmons stated he had no issues at this time.

Mr. Farrell reviewed the conditions as discussed this evening:

#3 – The details of each phase should be specifically added to the conditions as they are described in the slides.

#5 – Offered the hour change from 9am to 7pm closing for phase one and two. Mr. Hayward suggested language on condition #5.

Mr. Hayward stated a possible solution for condition #4 that would help with a trigger in the future would be to put a "comma at end of the paragraph; after finding of fact by Planning Board that a nuisance condition exists then would call in applicant to address the problem."

Mr. Hayward stated to add the date of the plans in condition #1.

Condition #26 was suggested to add "refuse service to anyone in violation of parking policy". Mr. Foley added they could specifically say not to park in the USPS lot on their website.

Condition #27 to ask the engineers to review lighting analysis. Mr. Giosioa stated they will do a lighting analysis to verify that is adequate lighting for illumination in that area.

Mr. Lucas asked about condition 6 and what it would take to bring them back to the Planning Board for a site review for cultivation. Mr. Keogh reviewed his licenses with the board. He said there are three, one for cultivating, manufacturing and dispensary. Medical marijuana requires all three. Currently they have moved cultivating and manufacturing to Freetown. He hold the provisional retail in Fairhaven and a provisional cultivation and manufacturing license in Freetown for adult use. He also holds license for home delivery of medical marijuana only.

Mr. Hayward asked if the board was ready to vote tonight. Mr. Lucas asked for a five-minute recess to give Mr. Foley the opportunity to gather the changes on the conditions. The applicant's Attorney Feingold stated they would like to see a vote tonight. Mr. Farrell stated they were adding two conditions; removing number 10 and adding 25 and 27. Wayne Hayward made a motion to take a five-minute recess and was seconded by Cathy Melanson. The motion passed unanimously.

The board reconvened at 8:14pm for Mr. Foley to rework the wording of the conditions for this project. Mr. Farrell introduced the members.

Mr. Foley read the rework of the conditions.

Condition #1, he would add the site plan date, stating that future parking will have to come back for a Special Permit site review. Mr. Keogh stated they would submit a new site plan in the future.

Condition #3, would describe the four phases as presented.

Attorney Feingold asked that a "super majority" rather than a unanimous vote by the working group be considered on condition #3. Mr. Farrell stated he would prefer not to change that language, advising if it is very well managed by Mr. Keogh then there would be no issues. Mr. Hayward agreed that the vote for condition #3 should remain unanimous. If all three parties can't agree then there is a problem. Attorney Feingold withdrew his request.

Mr. Foley advised there would be a total of 26 conditions.

Cathy Melanson made a motion to approve the Special Permit for Bask, Inc.; SP2020-03 with the twenty-six conditions as discussed and written by Mr. Foley. Mr. Fleurent seconded the motion and the motion passed unanimously via a roll call vote (6-0).

b) Upcoming Public Hearings:

i. SP2019-13 – Lewis Landing/Huttleston Multi-Unit Rentals: Tentatively August 25, 2020

Mr. Foley stated it has been advertised and notices sent out.

Mr. Hayward stated the last document he has seen is June 25, 2020 from the applicant's engineer. He said there is no confirmation of waivers being asked and they need a final letter from GCG where we stand on this project.

Mr. Foley stated GCG letter is on the website.

Mr. Farrell asked Mr. Foley to circulate that letter to members.

Proposed bylaw amendment – short term rentals

Mr. Foley sent out an amendment to members for a proposal to adopt a bylaw to reasonably regulate operators of short-term rentals. According to state DOR division of local services data bank lists 57 properties as short-term rentals currently registered in Fairhaven.

Mr. Foley stated the Town of Fairhaven has adopted the 6% rooms tax and anyone who registered with the State automatically pays that rooms tax. He said if we want to adopt a short-term rental bylaw the key question is going to be to decide where and how many times someone rent in a calendar year.

Mr. Foley reviewed the elements of a short-term rentals bylaw. Mr. Foley stated most are happening south on Sconticut Neck, as well as West Island. He said they would not necessarily have to limit the areas, if you limit the days. Mr. Farrell asked where it would fall on the use table in zoning regulations. He asked about bed and breakfasts. Mr. Foley stated a B&B would have to provide breakfast and have three rooms or less and an Airbnb does not.

Mr. Hayward referred to what is currently in our bylaws. He stated that Airbnb is a rental unit. He felt the best way to approach this potential article would be to first explain what we have today. Mr. Foley should look at non-family accommodations where an occupant has to live there and reviewed the use table of the zoning regulations. Zoning enforcement officer should've put out a statement that short-term rentals are not allowed in Fairhaven and can carry up to a \$300 fine. He said many of these are happening without anyone's knowledge and not being enforced. He stated it was going to be difficult to figure out what's allowed currently and see how we can fit this in.

Robert Hobson called in from the public. He stated he owns 5-6 properties in the area that he rents out yearly. He said there should be a hearing to authorize each Airbnb housing so neighbors have a chance to weigh in for each particular area.

Mr. Farrell stated that's why they are discussing a potential bylaw to help alleviate this situation. Mr. Farrell stated it is currently not an allowed use in Fairhaven.

Mr. Fleurent agreed with Mr. Hobson that there are a lot of short-term rentals that are happening all over West Island.

Mr. Farrell stated he understood the frustration, however the complaints should be going to the zoning enforcement officer to follow up because as it stands today, short-term rentals are not allowed in Fairhaven.

Mr. Hayward stated this is a matter of enforcement, and our last month's minutes stated that Mr. Foley was going to invite the current zoning officer to this meeting for a discussion; however Mr. White has giving his resignation and has ten more days on the job. Mr. Hayward stated he is not sure what the

next building commissioner's background of zoning is going to be, and that it is not up to Planning Board members to enforce these short-term rentals.

Mr. Hobson argued that he thinks if an Airbnb wanted to be in a certain area, they should attend a hearing, neighbors should be notified so that they can agree or disagree if they want that type of rental in their area.

Again, Mr. Farrell explained that he understood what Mr. Hobson was saying; however, the correct procedure as of this moment would be to file a complaint with the Zoning Enforcement officer because short-term rentals are not an approved use in the Zoning By-Laws in Fairhaven currently. Mr. Farrell agreed that he is aware it is happening, but does not mean it is legal.

Ms. Melanson stated she was just looking at Airbnb on-line and there are a lot more short-term rentals located in Fairhaven.

Mr. Hayward stated it is not easily understandable and he doesn't think it should be forwarded to the Select Board at this time until they can get some background on it. Mr. Foley will continue to get more information and bring it back to a future meeting.

Mr. Foley discussed future meetings, whereas August 25 is the next meeting. He said in September, the Select Board are meeting on September 8, 2020 because September 7 is a holiday. He suggested that the Planning Board can meet on September 1 or September 15. A discussion was had on meetings and scheduling.

In other business, Mr. Foley stated they received a grant for a study at Union Wharf to look at ways to maximize its capabilities.

Mr. Hayward asked that they continue to discuss the "mixed- use" language as it is a problem in the zoning regulations.

Cathy Melanson made a motion to adjourn and was seconded by Rene Fleurent. The meeting adjourned at 9:21p.m.

Respectively submitted,

Patricia A. Pacella
Recording Secretary